

Jaysie Heyduck

Subject: FW: shirrell v. roadship
Attachments: shirrell petkovich report.pdf; petkovich cv.pdf

From: Weisenbach, Michael <Michael.Weisenbach@wilsonelser.com>
Sent: Monday, February 5, 2018 10:19 AM
To: James Ruppert
Subject: shirrell v. roadship

James,

Dr. Petkovich's report and cv are attached. We will serve them in a supplemental production from my office.

Thanks,

Mike

Michael Weisenbach
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
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Thank you.



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**Frank O. Petkovich, MD
Curriculum Vitae
(As of January 1, 2018)**

Personal:

Born in St. Louis, Missouri

Home Address:

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St. Louis, Missouri 63131

Office Address:

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Undergraduate Education:

BA-University of Missouri, St. Louis 1969

Medical Education:

MD-St. Louis University 1973

Internship/Residency:

General Surgery-University of Illinois,
Chicago 1973-1974

Residency:

Orthopedic Surgery-University of
Missouri, Kansas City 1976-1980

Fellowship:

Fellowship in Spinal Surgery with
Henry LaRocca, MD, Tulane University
New Orleans, LA 1985

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Board Certification:

American Board of Orthopaedic Surgery
1983

American Board of Independent Medical
Examiners 2011, 2016

License:

Missouri and Illinois

Society Memberships:

Fellow, American Academy of
Orthopaedic Surgeons

Fellow, American College of Surgeons

Fellow, North American Spine Society

American Medical Association

St. Louis Metropolitan Medical Society

Missouri State Medical Association

St. Louis Orthopedic Society,
Past President

Missouri State Orthopedic Society

Hospital Appointments:

Missouri Baptist Medical Center

St. Luke's Hospital

Medical Practice:

Private practice in Orthopedic Surgery
St. Louis County, MO 1980-present

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February 3, 2018

Michael S. Weisenbach, Esq.
Wilson Elser Moskowitz Edelman & Dicker, LLP
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RE: David A. Shirrell
DOB: February 2, 1977
DOI: August 17, 2015

Dear Mr. Weisenbach:

I received a letter from your office dated January 25, 2018 accompanied by extensive medical records and radiographic studies concerning David A. Shirrell. This material has been reviewed by me.

David A. Shirrell is now 41 years old and lives in Waltonville, Illinois. Mr. Shirrell was the driver of a tow truck that was disabled along the side of the road on interstate 55 in Illinois on August 17, 2015. From review of records, another truck came along and collided with Mr. Shirrell's tow truck. As the other truck was approaching, Mr. Shirrell then jumped out of the way and rolled down a hill. He was not struck by either of the vehicles. Mr. Shirrell went to the emergency department at Salem Township Hospital in Salem, Illinois on August 17, 2015. At that time, he was complaining of some pain in his lower back and pain in the right gluteal area. He was released from the emergency department and then seen at a Convenient Care in Mt. Vernon, Illinois with lower back pain on September 29, 2015. He had x-rays of his lumbar spine performed at Good Samaritan Regional Health Center on September 29, 2015. I reviewed these x-rays that were sent to me on a CD which show overall good structural alignment with no acute findings. There is some narrowing at the L5-S1 disc space which is a chronic finding. There is no evidence of fracture or any acute bony abnormalities. Mr. Shirrell also had x-rays of his sacrum and coccyx at that time, which were reviewed by me. These show good structural alignment with no acute abnormalities. He was then treated

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conservatively for his lower back pain and pain in the right gluteal area. From review of records, it is noted that Mr. Shirrell did have a long history of lower back pain prior to that incident on August 17, 2015. I reviewed x-rays of his lumbar spine, taken at Good Samaritan Regional Health Center on March 3, 2010, which were taken at that time because of his lower back pain. These x-rays did not show any acute findings. I also reviewed x-rays lumbar spine taken on August 3, 2014 and then again Mr. Shirrell was seen in the emergency department on June 22, 2015 with complaints of lower back pain and pain in the right gluteal and hip area. X-rays on June 22, 2015 also did not show any acute bony abnormalities. All of his outside radiographic studies were sent to me and reviewed by me. These were all taken prior to the above incident on August 17, 2015, demonstrating Mr. Shirrell's long history of lower back pain and right gluteal pain prior to the above incident on August 17, 2015.

Mr. Shirrell was seen and followed conservatively after the above incident on August 17, 2015 as discussed above. He was then referred to see an orthopedic surgeon in Mt. Vernon, Illinois, Dr. Don Kovalsky on November 4, 2015. I did review that office visit note from Dr. Kovalsky. At that time, Mr. Shirrell was having severe lower back pain and severe pain in the right gluteal area and right lower extremity. Mr. Shirrell did have x-rays of his lumbar spine taken at that time at Dr. Kovalsky's office, Orthopedic Center of Southern Illinois. The x-rays lumbar spine at that time did not show any acute findings, but showed some disc space narrowing at the L5-S1 level. Mr. Shirrell then had an MRI of lumbar spine performed on November 13, 2015 at Orthopedic Center of Southern Illinois. I reviewed this MRI that was sent to me on a CD, which shows a large disc herniation on the right at the L5-S1 level, causing some compression of the S1 nerve root. There also are noted some degenerative changes at the L4-L5 level with some mild protrusion toward the right. There also are noted some very mild degenerative changes at the L3-L4 level with no protrusion. Dr. Kovalsky was concerned because of Mr. Shirrell's persistent severe pain and recommended surgery when he was seen in followup by him on November 20, 2015. Apparently, the surgery was not scheduled for a period of time. Dr. Kovalsky then saw Mr. Shirrell in followup on April 13, 2016 and a subsequent MRI lumbar spine was performed on March 30, 2016. I reviewed that MRI taken at Orthopedic Center of Southern Illinois, which again shows the large lumbar disc herniation at the L5-S1 level. Also noted are the mild degenerative changes at the L4-L5 level and even milder changes at the L3-L4 level. Dr. Kovalsky performed surgery on April 18, 2016 at Good Samaritan Surgery Center. I reviewed the operative report which describes a right L5-S1 lumbar laminotomy with microdiscectomy and removal of a large disc herniation and free fragments.

Mr. Shirrell was seen for an independent medical evaluation and examination on February 4, 2016 by another orthopedic surgeon in St. Louis County, Missouri, Dr. Matthew Gornet. I did review that office visit note from Dr. Gornet. At that time, Mr. Shirrell was having pain in his lower back and right lower extremity. Dr. Gornet did review the MRI lumbar spine from November 13, 2015. Dr. Gornet's diagnosis was the lumbar disc herniation at the L5-S1 level and the degenerative disc changes at the L4-L5 and lesser extent L3-L4 levels. Dr. Gornet

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agreed that Mr. Shirrell would benefit from surgery for the lumbar laminotomy and discectomy at the L5-S1 level. Accordingly, Mr. Shirrell did then have the above surgery performed by Dr. Kovalsky on April 18, 2016.

After the surgery by Dr. Kovalsky on April 18, 2016, Mr. Shirrell did very well with resolution of his right lower extremity pain. His lower back pain also improved. He was seen in followup by Dr.

Dr. Kovalsky on May 25, 2016, June 22, 2016, July 6, 2016, and August 12, 2016. He did have some recurring lower back pain and right lower extremity pain when he was seen in followup by Dr. Kovalsky in August 2016. He had a repeat MRI lumbar spine performed on August 9, 2016. I reviewed this study which shows the prior disc herniation at the L5-S1 level had been removed. Mr. Shirrell was then further seen in followup by Dr. Kovalsky on September 9, 2016, November 16, 2016. He continued to do well and improved. He was last seen by Dr. Kovalsky on February 15, 2017, and at that time, Dr. Kovalsky released him at maximum medical improvement. It was Dr. Kovalsky's opinion that Mr. Shirrell could return to work without any restrictions.

David A. Shirrell was then seen for a repeat independent medical evaluation and examination by Dr. Matthew Cornett on November 16, 2017. I reviewed that office visit note from Dr. Cornett. In that note, Dr. Cornett states that he believed there was a greater than 50% chance that Mr. Shirrell would need further surgery on his lumbar spine and that surgery would consist of anterior lumbar discectomies and total disc replacements at L3-L4 and L4-L5. Also, the surgery would consist of lumbar spinal fusion at the L5-S1 level with instrumentation.

Mr. Shirrell is apparently now working at a different job from what he was doing at the time of the above accident on August 17, 2015.

I reviewed the deposition of Dr. Kovalsky performed on January 17, 2018 which is 141 pages in length. In the deposition, it describes Mr. Shirrell's treatment as discussed above. Again, Mr. Shirrell was released from the care of Dr. Kovalsky at maximum medical improvement on February 15, 2017 without any work restrictions. Dr. Kovalsky states in his deposition that there is a 20% chance that Mr. Shirrell may need further surgery in the future for a fusion at the L5-S1 level. Dr. Kovalsky also states that the surgery fee for that would be \$8000 to \$10,000 and the facility fee and any instrumentation would be a total of \$60,000 to \$70,000. Dr. Kovalsky states specifically that he did not believe the degenerative changes in Mr. Shirrell's lumbar spine at the L4-L5 level had anything to do with the above incident on August 17, 2015. He stated those degenerative changes at L4-L5 were the reason Mr. Shirrell was having lower back pain prior to that incident on August 17, 2015. Again, Dr. Kovalsky did not recommend any further surgery for Mr. Shirrell's lumbar spine at this time, and stated that there was only a 20% chance of further surgery at the L5-S1 level.

I reviewed the deposition of David A. Shirrell taken on November 30, 2017 which was 125 pages in the length.

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After review of all the above, my opinions and recommendations are as follows:

1. Mr. Shirrell successfully underwent the above surgical procedure by Dr. Kovalsky for the right L5-S1 lumbar laminotomy with microdiscectomy. This surgery was performed for the right L5-S1 lumbar disc herniation. I do not believe the degenerative changes at the L4-L5 and L3-L4 levels have anything to do with the above incident on August 17, 2015. Therefore, I do not believe the proposed surgery by Dr. Gornet at the L3-L4 and L4-L5 levels has anything to do with the above incident on August 17, 2015. It is my opinion that there is approximately a 10% chance that Mr. Shirrell may need further surgery for a lumbar spinal fusion at the L5-S1 level in the future. If that surgery were necessary, the surgical fee would be approximately \$8000 to \$10,000. The facility fee including instrumentation would be approximately \$50,000 to \$70,000.
2. As discussed above, I do not anticipate at this time that Mr. Shirrell will need any further diagnostic evaluation or treatment for his lumbar spine in the future as a result of the above incident on August 17, 2015. I believe as stated above, there is a 10% or less chance that he may need surgery at some time for a spinal fusion at the L5-S1 level. I have reviewed the report from Dr. Gornet on November 16, 2017. I do not believe the changes at the L3-L4 and L4-L5 disc space levels are in any way related to the incident on August 17, 2015. Also, based upon the information I have available to me at this time, I do not believe any type of surgery is necessary at this time for Mr. Shirrell's lumbar spine.
3. As discussed above, I believe there is a chance of approximately 10% that Mr. Shirrell will need surgery in the future for the L5-S1 level as discussed with a fusion. The costs are as discussed above.
4. It is noted on review of records where Mr. Shirrell did have a history of lower back pain and right lower extremity pain prior to that incident on August 17, 2015. I believe much of that lower back pain was coming from the mild degenerative changes at the L4-L5 level and the milder changes at the L3-L4 level. I also believe much of his pain prior to the incident on August 17, 2015 was coming from the L5-S1 level. Mr. Shirrell never had an MRI on his lumbar spine prior to that incident on August 17, 2015. Therefore, I cannot state with certainty how much pathology and disc herniation at the L5-S1 level was present prior to that incident on August 17, 2015.
5. In Dr. Kovalsky's deposition, he discussed granulation tissue in the L5-S1 disc material at the time of the above surgery on April 18, 2016. He states this granulation tissue means

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the herniation is less than 1-year-old, meaning it occurred prior to April 18, 2015. I do not agree with that statement. I believe granulation tissue can be present with a herniation that has existed for several years.

All of the above represent my opinions and recommendations; these have been made within a reasonable degree of medical certainty. The above medical records and radiographic studies were reviewed by me for 2 hours on January 31, 2018. The records, radiographic studies and depositions were reviewed by me for 3 hours on February 1, 2018. The depositions were reviewed by me on February 2, 2018 for 2 hours. This narrative report was dictated on February 3, 2018.

If you have any further questions regarding this, please feel free to contact me.

Sincerely,

Frank O. Petkovich, M.D.

FOP:MT/SSG